



Railway and Canal Traffic Act 1888

1888 CHAPTER 25

PART III

CANALS

36 Part II to extend to canal companies

All the provisions of Part II. of this Act relating to any railway company shall, so far as applicable, apply to every canal company, and to every railway and canal company ; and in Part II. of this Act, unless the context otherwise requires, the expression " railway company " shall include a canal company and railway and canal company, and the expression " railway " shall include a canal, and the expression " rate " shall include tolls and dues of every description chargeable for the use of any canal or by any canal company.

37 Application of 36 & 37 Vict. c.48 to canals

- (1) Section fifteen of the Regulation of Railways Act, 1873, shall apply to the terminal charges of a canal company.
- (2) The Railway and Canal Traffic Act, 1854, as amended by the Regulation of Railways Act, 1873, shall extend to any person whose consent is required to any variation of the rates, tolls, or dues charged for the use of any canal, or by any canal company, in like manner as if such person were a canal company, and the expressions " canal company " and " railway and canal company " in the said Acts and this Act shall be construed accordingly to include such person.
- (3) The provisions of the Railway and Canal Traffic Act, 1854, and the Regulation of Railways Act, 1873, with respect to rates, shall apply to tolls and dues of every description chargeable for the use of any canal or by any canal company. And nothing in any agreement, whether made before or after the passing of this Act, and whether confirmed by Act of Parliament or not, and nothing in this Act shall prevent the Commissioners from making or enforcing any order for a through rate or toll which may in their opinion be required in the interest of the public.

- (4) Any company allowing traffic to pass from a canal on to any other canal or any railway, or from a railway on to a canal, shall be deemed to be a forwarding company, and the allowing of traffic so to pass shall be deemed to be the forwarding of traffic within the meaning of the above-mentioned Acts.
- (5) The provisions of the Railway and Canal Traffic Act, 1854, and of the Regulation of Railways Act, 1873, and of this Act, with respect to through rates, shall extend to any canals which, in connexion with any river or other waterway, form part of a continuous line of water communication, notwithstanding that tolls may not be leviable by authority of Parliament upon such river or other waterway.

38 Powers of Commissioners over canal tolls, rates, and charges where a railway company or its officers own or control the traffic of a canal

Where a railway company, or the directors or officers of a railway company, or any of them or any persons on their behalf, have the control over, or the right to interfere in or concerning the traffic conveyed, or the tolls, rates, or charges levied on the traffic of or for the conveyance of merchandise on a canal, or any part of a canal, and it is proved to the satisfaction of the Commissioners that the tolls, rates, or charges levied on the traffic of or for the conveyance of merchandise on the canal are such as are calculated to divert the traffic from the canal to the railway, to the detriment of the canal or persons sending traffic over the canal or other canals adjacent to it—

- (1) The Commissioners may, on the application of any person interested in the traffic of the canal, make an order requiring the tolls, rates, and charges levied on the traffic of or for the conveyance of merchandise on the canal, to be altered and adjusted in such a manner that the same shall be reasonable as compared with the rates and charges for the conveyance of merchandise on the railway :
- (2) If within such time as may be prescribed by the order of the Commissioners, the tolls, rates, and charges levied on the traffic of or for the conveyance of merchandise on the canal are not altered and adjusted as required by such order, the Commissioners may themselves by an order make such alterations in and adjustment of the tolls, rates, and charges levied on the traffic of or for the conveyance of merchandise on the canal as they shall think just and reasonable, and the tolls, rates, and charges as altered and adjusted by the order of the Commissioners shall be binding on the company or persons owning or having the control over the traffic of, or the tolls, rates, and charges levied on the traffic of, or for the conveyance of merchandise on the canal:
- (3) No application shall be made to the Commissioners under this section until the Board of Trade have certified that the applicant is a fit person to make the application, and that the application is a proper one to be submitted for the adjudication of the Commissioners; and no order shall be made by the Commissioners under this section unless notice of the application has been served upon such company and persons, and in such manner as the Board of Trade may direct:
- (4) The Commissioners may at any time, upon the application of any company or person affected by any order made under this section, and after notice to and hearing such companies and persons as the Commissioners may by any general rules or special order prescribe, rescind or vary any order made under this section.

39 Returns by canal companies

- (1) Every canal company shall, on or before the first day of January in every year, beginning on the first day of January next after the passing of this Act, send to the registrar of joint stock companies a return stating the name of the company, a short description of their canal, the name of their principal officer, and the place of their office, or, if they have more than one office, of their principal office.
- (2) Every canal company shall within such time as may be prescribed by the Board of Trade, and afterwards from time to time whenever required by the Board of Trade, not being oftener than once in every year, forward to the Board of Trade in such form and manner as the Board may from time to time prescribe, such returns as the Board of Trade may require for the purpose of showing the capacity of such canal for traffic, and the capital, revenue, expenditure, and profits of the canal company.
- (3) When the canal of a canal company, or any part thereof, is intended to be stopped for more than two days, the company shall report to the Board of Trade, stating the time during which such stoppage is intended to last, and when the same is re-opened the company shall so report to the Board of Trade.
- (4) A company failing to comply with this section, shall be liable, on summary conviction, to a fine not exceeding five pounds for every day during which their default continues, and any director, manager, and officer of the company who knowingly and wilfully authorises or permits the default shall be liable, on summary conviction, to the like fine.

40 Byelaws of canal companies

- (1) Every canal company shall, before such date as the Board of Trade may prescribe, forward to the Board of Trade true copies, certified in such manner as the Board of Trade direct, of any byelaws or regulations of such company which are in force at the commencement of this Act; and the byelaws of any canal company, copies of which are not forwarded to the Board of Trade as provided by this section, shall from and after the said date cease to have any operation, save in so far as any penalty may have been already incurred under the same.
- (2) A byelaw or regulation of any canal company hereafter to be made under any power which has before or at the time of the passing of this Act been, or which may hereafter be, conferred on any canal company, shall not have any force or effect until two months after a true copy of such byelaw or regulation, certified in such manner as the Board of Trade direct, has been forwarded to the Board of Trade, unless the Board of Trade before the expiration of such period have signified their approbation thereof.
- (3) The Board of Trade may, at any time after any existing or future byelaws or regulations of a canal company have been forwarded to them, notify to the company their disallowance thereof, or of any of them, and in case such byelaws or regulations are in force at the time of the disallowance, the time at which the said byelaws or regulations shall cease to be in force. A byelaw or regulation disallowed by the Board of Trade shall not after such disallowance have any force or effect whatever, save (as regards any byelaw or regulation which may be in force at the time of the disallowance thereof) in so far as any penalty may have been then already incurred under the same.
- (4) The Board of Trade may from time to time make, rescind, and vary such regulations as they think fit with respect to the publication by canal companies of their byelaws and regulations, and with respect to the publication by canal companies of their intention to

apply to the Board of Trade for the allowance of any intended byelaws and regulations. Any regulations so made which are for the time being in force, shall have effect as if they had been enacted in this Act.

41 Inspection of canals

Whenever the Board of Trade are, through their officers or otherwise, informed that the works of any canal are in such a condition as to be dangerous to the public, or to cause serious inconvenience or hindrance to traffic, the Board of Trade may direct such officer or other person as they appoint for the purpose to inspect the said canal and report thereon to the Board of Trade, and for the purpose of making any inspection under this section the officer or person appointed for the purpose shall, in relation to the canal or works to be inspected, have all the powers of an inspector appointed under the Regulation of Railways Act, 1871.

42 Misapplication of a railway company's funds for acquisition of unauthorised interest in canal

- (1) No railway company, or director, or officer of a railway company shall, without express statutory authority, apply or use or authorise or permit the application or use of any part of the company's funds for the purpose of acquiring either in the name of the railway company, or of any director or officer of the railway company, or other person, any canal interest, or of enabling any director or officer of the railway company, or other person, to purchase or acquire any canal interest, or of guaranteeing or repaying to any director or officer of the railway company or other person who has purchased or acquired any canal interest the sums of money expended or liability incurred by such director, officer, or person, in the purchase or acquisition of such canal interest, or any part of such money or liability.
- (2) In the event of any contravention of the provisions of this section, the canal interest purchased in such contravention shall be forfeited to the Crown, and the directors or officers of the company who so applied or used, or authorised or permitted such application or use of the company's funds, shall be liable to repay to the company the sums so applied or used and the value of the canal interest so forfeited; and proceedings to compel such repayment may be taken by any shareholder in the company.
- (3) In this section the expression " company's funds " means the corporate funds of any railway company, and includes any funds which are under the control of or administered by a railway company ; the expression " officer" includes any person having any control over a company's funds or any part thereof; and the expression " canal interest" means shares in the capital of a canal company, and includes any interest of any kind in a canal company or canal.

43 Canal companies may agree for through tolls, &c

- (1) Any canal company may make and enter into contracts and arrangements with any other canal company or canal companies for the passage over and along their respective canals, or any of them, of boats, barges, vessels, and other through traffic, and for the use, by such traffic, of the wharves, lauding places, and other works of any such canal, upon payment of such through tolls, rates, and charges, and subject to such conditions and restrictions as may be agreed upon between such companies; and for the collection and recovery by any one of the companies on behalf of themselves and the other companies interested of the tolls, rates, and charges payable in respect of such

through traffic; and for the division and apportionment of the tolls, rates, and charges; and any such contract may contain provisions for the erection and maintenance of or otherwise for providing warehouses, offices, and other buildings and conveniences, and any other provisions for the purpose of carrying into effect any such arrangement, and any company may apply their funds or moneys for the same purpose.

- (2) Notwithstanding any enactments providing for the charge of equal tolls, rates, and charges, such through tolls, rates, and charges as above mentioned may respectively be computed at a lower toll or rate per mile than the tolls, rates, or charges charged for the passage over and along the same canals of like traffic, not being through traffic, without necessitating or occasioning any reduction of the last-mentioned tolls, rates, or charges.
- (3) Any like contracts and arrangements existing at the passing of this Act shall be, and from the respective dates of the making thereof shall be deemed to have been, as valid as if the same had been made after the commencement of this Act.

44 Canal companies may establish clearing system

For the purpose of facilitating through traffic upon canals, any canal companies upon whose canals through tolls, rates, or charges may be in operation, may establish a canal clearing system, on such principles, in such manner, and subject to such regulations as to the admission of other companies to such system, the retirement of members, the appointment of a committee to conduct the business of the system, and of a secretary or other necessary officers, the mode of conducting business, and such other regulations for carrying into effect such system as may from time to time be approved by the Board of Trade in writing under the hand of the secretary or one of the assistant secretaries of that Board ; and any company may apply any funds or money belonging to them, for the purpose of establishing or carrying into effect any such system, and the provisions of sections eleven to twenty-six, inclusive of the Railway Clearing Act, 1850, shall, mutatis mutandis, apply to any canal clearing system when so established.

45 Abandonment of canal

- (1) Where, on the application of a canal company, it appears to the Board of Trade that any canal or part of a canal belonging to the applicants (herein-after referred to as an unnecessary canal) is at the time of making the application unnecessary for the purposes of public navigation, or where, on the application of any local authority, or of three or more owners of lands adjoining or near to any canal or part of a canal, it appears to the Board of Trade that that canal or part of a canal (herein-after referred to as a derelict canal) has for at least three years previously to the making of the application been disused for navigation, or, by reason of the default of the proprietors thereof, has become unfit for navigation, or that the lands adjoining or near thereto have suffered injury by water that has escaped from the derelict canal, and that the proprietors of the derelict canal decline or are unable to effect the repairs necessary to prevent further injury, the Board of Trade may by warrant signed by their secretary authorise the abandonment by the existing proprietors of such unnecessary canal or such derelict canal, and after the granting of the warrant, and the due publication as required by the Board of Trade of a notice of the granting thereof, the Board of Trade may make an order releasing the canal company or other the proprietors of the unnecessary or derelict canal from all liability to maintain the same canal, and from all statutory and other obligations in respect thereof, or of or consequent on the abandonment thereof.

Status: This is the original version (as it was originally enacted).

- (2) In the case of an unnecessary canal no warrant of abandonment shall be granted unless the Board of Trade are satisfied—
 - (a) That it is unnecessary for the purposes of public navigation ;
 - (b) That the application has been expressly authorised by a resolution of a majority of the shareholders of the canal company owning the canal present and voting at an extraordinary or special general meeting of that company ;
 - (c) That such public and other notices of the application have been given as the Board of Trade may require;
 - (d) That compensation (the amount thereof to be determined in case of difference as the Board of Trade may prescribe) has been made to all persons entitled to compensation by reason of the proposed abandonment of the canal.
- (3) In the case of a derelict canal the warrant may be granted on the condition that the canal or any part thereof, with all or any of the powers relating thereto, be transferred to any person, body of persons, or local authority, and where any such condition is imposed the Board of Trade may, if they think fit, frame and embody in a Provisional Order a scheme for the management of the canal or any part thereof.
- (4) The Provisional Order may provide for the constitution of a body to manage the canal or any part thereof, for the transfer to that body or any local authority of the canal or any part thereof, and of all or any of the powers relating thereto, for the limitation or discharge of any liabilities affecting the canal or the owners thereof for the time being, and for any other matters which may appear to the Board of Trade to be necessary or proper for carrying this section into effect.
- (5) The Board of Trade may submit to Parliament for confirmation any Provisional Order made by it in pursuance of this section, but any such order shall be of no force unless and until it is confirmed by Act of Parliament.
- (6) If while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to the order, may be referred to a select committee, and the petitioners shall be allowed to appear and oppose as in the case of private Bills.
- (7) In this section the expression "local authority" means any one of the local authorities mentioned in section seven of this Act.
- (8) For the purpose of giving effect to the provisions of this section, the Board of Trade may require the applicants to furnish any evidence in their possession or under their control relative to the application, and may at the expense of the applicants appoint and send an officer to inspect the canal referred to in the application, and to obtain information and evidence in the neighbourhood thereof relative to the proposed abandonment, and may from time to time make regulations as to the mode of making applications, and the nature and mode of publication of notices, and generally as to the conduct of proceedings.

46 Definition of "canal company"

In this part of this Act the expression " canal company " shall include a "railway and canal company," so far as relating to any canal of any such last-mentioned company.